

EXHIBIT "A"

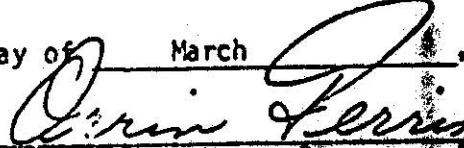
STATE OF MONTANA
BEFORE THE DEPARTMENT OF NATURAL RESOURCES
AND CONSERVATIONIN THE MATTER OF APPLICATION
FOR BENEFICIAL WATER USE
PERMIT FILED BY WALLACE E. ELLIOT,
APPLICATION NO. 859-s41BFINDINGS OF FACT, CONCLUSIONS
OF LAW AND ORDER

The Proposed Findings of Fact and Conclusions of Law in this matter, entered on September 16, 1974, are hereby adopted as the Final Findings of Fact, Conclusions of Law and the Final Order is hereby ordered.

ORDER

1. The applicant's permit is granted allowing the appropriation of 0.557 cubic feet per second of water from the unappropriated waters of Blacktail Deer Creek and not to exceed 18.3 acre-feet per year. The water is to be appropriated for stock-watering and irrigation purposes.
2. The completion of the works and the application of the water to the proposed beneficial use must be made within one year from the date of issuance of the permit.
3. The permit issued is a provisional one, and the applicant shall not appropriate any of the waters of Blacktail Deer Creek at any time during the year when the flow of the creek is such that the applicant's appropriation would adversely affect the rights of any prior appropriator.
4. The provisional permit is issued subject to prior existing water rights and subject to any final determination of existing water rights made pursuant to the Montana Water Use Act.

Done this fifth day of March, 1975.


Orrin Ferris
Administrator, Water Resources Division
DEPARTMENT OF NATURAL RESOURCES
AND CONSERVATION

~~CASE NUMBER~~

BEFORE THE MONTANA DEPARTMENT
OF
NATURAL RESOURCES AND CONSERVATION

IN THE MATTER OF THE APPLICATION
OF WALLACE E. ELLIOT, 859-S41B

PROPOSED FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

Pursuant to the provisions of the Montana Water Use Act, Section 89-965 et seq., R.C.M. 1947, after due notice, a public hearing was held August 15, 1974, in the Courtroom of the Beaverhead County Courthouse, Dillon, Montana.

The objectors who appeared at the hearing were Robert N. Miller, Phil Taylor and Luanna Lyons by her attorney Frank Davis.

The applicant did not appear but submitted written testimony which was read into the record by the Hearings Officer.

Motions were made on behalf of Luanna Lyons by her attorney to dismiss the application on the grounds that the applicant did not appear in person. The motions were denied and by this order said denials are sustained.

Evidence was introduced by the objectors to the above entitled application. The objectors contended that the granting of the application would diminish the water to which they were entitled to appropriate and that Blacktail Deer Creek is a decreed stream.

The law and the evidence having been fully considered, and the Department of Natural Resources and Conservation having made a field investigation and surveys of area, the following Findings of Fact and Conclusions of Law are hereby made and entered by the Hearings Officer.

FINDINGS OF FACT

1. On October 29, 1973, Wallace E. Elliot, Dillon, Montana, filed with the Department of Natural Resources and Conservation an application to appropriate 0.557 cubic feet per second of water and not to exceed 18.3 acre-feet per year in Beaverhead County, Montana. The water to be diverted from Blacktail Deer Creek, a tributary of the Beaverhead River, at a point in the SE $\frac{1}{4}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 18, Township 7 South, Range 8 West, M.P.M., and used for stock-watering purposes from January 1 to December 31, inclusive, of each year, and for irrigation purposes on a total of 5 acres, more or less, in the SE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 18, Township 7 South, Range 8 West, M.P.M., from April 1 to October 15, inclusive, of each year.

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2. Objections to the application were filed by Luanna Lyons, Whitchall, Lyons, Bill Taylor, Robert H. Miller, and Michael W. Durand, all of Dillon, Montana.

3. Blacktail Deer Creek is a decreed stream, the lower end of Blacktail Deer Creek was decreed as part of the Case No. 626 Beaverhead River Decree.

4. The SE $\frac{1}{4}$ of SE $\frac{1}{4}$ of NE $\frac{1}{4}$ of Section 18, Township South, Range 8 West, of Beaverhead County, is an area of high water recharge.

5. The flow of the Blacktail Deer Creek at the point above described is above the decreed flow of the stream at many times throughout the year, and because of the high recharge in the area the flow of the creek is much more constant than the flow of the creek above Dillon, Montana.

CONCLUSIONS OF LAW

1. Under the provisions of Section 89-880, R.C.M. 1947, a permit to appropriate water from Blacktail Deer Creek for beneficial use is required.

2. Although Blacktail Deer Creek is a decreed stream there are at times during the year unappropriated waters in the source of supply.

3. The proposed use of water, irrigation and stock water, is a beneficial use for which water may be appropriated.

4. The proposed use will not interfere unreasonably with other planned uses or developments for which a permit has been issued or which water has been reserved.

5. The appropriation of 0.557 cubic feet per second of water from the unappropriated waters of Blacktail Deer Creek would not adversely affect prior appropriations.

6. The application for beneficial water use permit may be granted in accordance with the provisions of Chapter 8 of Title 89 of the Laws of the State of Montana.

Based on the above proposed findings of fact and conclusions of Law, the following order is proposed:

PROPOSED ORDER

1. The applicant's permit is granted allowing the appropriation of 0.557 cubic feet per second of water from the unappropriated waters of Blacktail Deer Creek and not to exceed 10.3 acre-feet per year. The water is to be appropriated for stock watering and irrigation purposes.

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2. The application for the work and the application for the water to the proposed beneficial use must be made within one year from the date of issuance of the permit.

3. The permit issued is a provisional one, and the applicant shall not appropriate any of the waters of Blacktail Deer Creek at any time during the year when the flow of the creek is such that applicants appropriation would adversely affect the rights of any prior appropriator.

4. The provisional permit is issued subject to existing rights and subject to any final determination of existing rights made pursuant to the Montana Water Use Act.

NOTICE: This is a proposed order and will become final when accepted by the Administrator of the Water Resources Division of the Department of Natural Resources and Conservation. Written exceptions to the proposed order shall be filed with the Department within ten (10) days of service upon the parties herein. Upon receipt of any written exceptions, opportunity will be provided to file briefs and to make oral arguments before the Administrator of the Water Resources Division.

September 16, 1974

Date

Donald D. MacIntyre

Donald D. MacIntyre
Hearing Examiner

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